

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY ARVAI,

Plaintiff,

Case No. 14-10954

v.

Hon. John Corbett O'Meara

ALLSTATE INDEMNITY CO.,

Defendant.

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**ORDER GRANTING MOTION  
FOR VOLUNTARY DISMISSAL**

Before the court is Defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Rather than filing a response, Plaintiff filed a motion for voluntary dismissal without prejudice pursuant to Rule 41(a)(2). Defendant has not responded to Plaintiff's motion for voluntary dismissal.

Defendant contends this case must be dismissed because Plaintiff lacks standing to bring her claim, she has failed to join indispensable parties who would destroy diversity jurisdiction, and the required amount in controversy for diversity jurisdiction is not met. Plaintiff seeks to voluntarily dismiss this action without prejudice so as to cure the jurisdictional issues or re-file in state court.

Rule 41(a)(2) provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . . Unless the

order states otherwise, a dismissal under this paragraph (2) is without prejudice.”

Fed. R. Civ. P. 41(a)(2).

Whether dismissal should be granted under Rule 41(a)(2) “is within the sound discretion of the district court.” Grover v. Eli Lilly & Co., 33 F.3d 716, 718 (6<sup>th</sup> Cir. 1994). “The primary purpose of the rule in interposing the requirement of court approval is to protect the nonmovant from unfair treatment.” Id. The court should grant dismissal without prejudice unless the defendant would suffer “plain legal prejudice” as a result, “as opposed to the facing the mere prospect of a second lawsuit.” Id. “In determining whether a defendant will suffer plain legal prejudice, a court should consider such factors as the defendant’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.” Id.

In light of the procedural posture of this case, that discovery is ongoing, and that Defendant has not sought dismissal on the merits, the court finds that Defendant will not suffer “plain legal prejudice” if a voluntary dismissal without prejudice is granted.

Therefore, IT IS HEREBY ORDERED that Plaintiff’s motion for dismissal

pursuant to Rule 41(a)(2) is GRANTED.

IT IS FURTHER ORDERED that Defendant's motion to dismiss is  
DENIED AS MOOT.

IT IS FURTHER ORDERED that Plaintiff's complaint is DISMISSED  
WITHOUT PREJUDICE.

s/John Corbett O'Meara  
United States District Judge

Date: February 18, 2015

I hereby certify that a copy of the foregoing document was served upon  
counsel of record on this date, February 18, 2015, using the ECF system.

s/William Barkholz  
Case Manager